

ASSEMBLY BILL

No. 1579

**Introduced by Committee on Governmental Organization (Price
(Chair), Cook, Coto, Evans, Galgiani, Hall, Hill, Jeffries, Lieu,
Mendoza, Portantino, Torres, Torrico, and Tran)**

March 23, 2009

An act to amend Section 24044.5 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1579, as introduced, Committee on Governmental Organization. Alcoholic beverage control: licensees: operating permits.

Existing law authorizes the Department of Alcoholic Beverage Control, in its discretion, to issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions.

This bill would revise the authorization of the Department of Alcoholic Beverage Control to, in its discretion, issue an interim operating permit to an applicant for any license to operate the premises during the period an application for a license at the premises is pending, subject to specified condition applicable to all licensees or retail licensees only.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 24044.5 of the Business and Professions
2 Code is amended to read:

3 24044.5. (a) The department, in its discretion, may issue an
4 interim-~~retail~~ *operating* permit to an applicant for any-~~retail~~ license
5 to operate the premises during the period an application for a
6 license at the premises is pending and when all of the following
7 conditions exist:

8 (1) The application has been protested pursuant to Article 3
9 (commencing with Section 24011).

10 (2) The department has made a determination based upon its
11 investigation that the license should be issued.

12 (3) The applicant for the interim-~~retail~~ *operating* permit has
13 filed with the department an application for issuance of a license
14 at the premises to himself or herself.

15 (4) The application for the interim-~~retail~~ *operating* permit is
16 accompanied by a fee of one hundred dollars (\$100).

17 (b) An interim-~~retail~~ *operating* permit issued by the department
18 pursuant to this section shall be for a period not to exceed 120
19 days. An interim-~~retail~~ *operating* permit may be extended at the
20 discretion of the department for additional 120-day periods as
21 necessary upon payment of an additional fee of one hundred dollars
22 (\$100) and upon compliance with all conditions required by this
23 section. Any-~~interim~~ *operating* retail permit issued by the
24 department shall be automatically canceled when a final
25 determination made by the department regarding the protests
26 becomes effective or when the application for the-~~retail~~ license is
27 withdrawn, whichever occurs first. An interim-~~retail~~ *operating*
28 permit is a conditional permit and authorizes the holder-~~thereof to~~
29 ~~sell alcoholic beverages as would be permitted to be sold under~~
30 ~~the to whom issued to exercise the rights and privileges of the~~

1 license for which the application has been filed with the
2 department. Any conditions for which the applicant has petitioned
3 pursuant to Article 1.5 (commencing with Section 23800) of
4 Chapter 5 shall apply to any interim ~~retail~~ *operating* permit issued
5 by the department.

6 (c) Purchase of beer and wine by the holder of an interim ~~retail~~
7 *operating* permit *issued to an applicant for a retail license* shall
8 be made only upon payment before or at the time of delivery in
9 currency or by check. Purchase of distilled spirits by the holder of
10 an interim ~~retail~~ *operating* permit *issued to an applicant for a retail*
11 *license* shall be made only upon payment before or at the time of
12 delivery in currency or by certified check. However, the holder of
13 an interim ~~retail~~ *operating* permit *issued to an applicant for a retail*
14 *license*, who also holds one or more retail licenses and is operating
15 under the retail license or licenses in addition to the interim ~~retail~~
16 *operating* permit, and who is not delinquent under the provisions
17 of Section 25509 as to any retail license under which he or she
18 operates, may purchase alcoholic beverages on credit under the
19 interim ~~retail~~ *operating* permit.

20 (d) All checks received by a seller for beer or wine purchased
21 by the holder of an interim ~~retail~~ *operating* permit *issued to an*
22 *applicant for a retail license* shall be deposited not later than the
23 second business day following the date the beer or wine is
24 delivered.

25 A check dishonored on presentation shall not be deemed
26 payment. The receipt by the seller or his or her agent in good faith
27 from a holder of a ~~temporary~~ *an interim operating* permit of a
28 check dishonored on presentation shall not be cause for disciplinary
29 action against the seller.

30 (e) Issuance of the license for which the holder of an interim
31 ~~retail~~ *operating* permit *issued to an applicant for a retail license*
32 has filed an application shall not be approved by the department
33 until the holder of the interim ~~retail~~ *operating* permit has filed with
34 the department a statement executed under penalty of perjury that
35 all current obligations have been discharged, and that all
36 outstanding checks issued by him or her in payment for alcoholic
37 beverages will be honored on presentation.

38 (f) It shall not be a violation of this section or grounds for
39 disciplinary action for any licensee to extend credit to the holder
40 of an interim ~~retail~~ *operating* permit *issued to an applicant for a*

1 *retail license* or to receive payment from the ~~permittee~~ *holder of*
2 *an interim operating permit* in a manner other than authorized
3 herein unless the seller has knowledge of the fact that the purchaser
4 was operating under an interim ~~retail operating~~ permit. Knowledge
5 of the fact may be established by evidence, including, but not
6 limited to, evidence that, at the time of receipt of payment or the
7 extension of credit, the premises operated under an interim ~~retail~~
8 *operating* permit were posted with the notice required by Section
9 23985, or the holder of the interim ~~retail operating~~ permit has
10 recorded notice as required by Section 24073, or the holder of the
11 interim ~~retail operating~~ permit has published notice as required
12 by Section 23986, or the holder of the interim ~~retail operating~~
13 permit has recorded and published notice pursuant to Division 6
14 (commencing with Section 6101) of the Commercial Code.

15 (g) Refusal by the department to issue or extend an interim ~~retail~~
16 *operating* permit shall not entitle the applicant to petition for the
17 permit pursuant to Section 24011, or to a hearing pursuant to
18 Section 24012. Articles 2 (commencing with Section 23985) and
19 3 (commencing with Section 24011) shall not apply to interim
20 ~~retail operating~~ permits.

21 (h) Notwithstanding any other provision of law, the department
22 may, in its discretion, cancel or suspend summarily at any time an
23 interim ~~retail operating~~ permit if the department determines that
24 good cause for the cancellation or suspension exists. Chapter 8
25 (commencing with Section 24300) shall not apply to interim ~~retail~~
26 *operating* permits.

27 (i) Application for an interim ~~retail operating~~ permit shall be
28 on any form the department shall prescribe. If an application for
29 an interim ~~retail operating~~ permit is withdrawn before issuance or
30 is refused by the department, the fee that accompanied the
31 application shall be refunded in full, and Section 23959 shall not
32 apply. Fees received by the department for issuance of interim
33 ~~retail operating~~ permits shall be deposited in the Alcohol Beverage
34 Control Fund as provided in Section 25761.

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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